Office - Supreme Court, U.S.
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SEP 27 1957
JOHN T. FEY, Clerk

No. 510

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

WORLD INSURANCE COMPANY,

Appellant,

v.

MRS. GUY D. BETHEA, ADMINISTRATRIX, ESTATE OF DR. GUY D. BETHEA, DECEASED,

Appellee.

On Appeal from the Supreme Court of Mississippi

STATEMENT AS TO JURISDICTION

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STATEMENT AS TO JURISDICTION

Appellant appeals from the final judgment of the Supreme Court of Mississippi entered on March 18, 1957, which affirmed the judgment in favor of the appellee on a policy of insurance, and from the order and judgment of said Court, entered on May 6, 1957, overruling the appellant's suggestion of errors.

Appellant submits this statement to show that this Court has jurisdiction on the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Mississippi entered on March 18, 1957 (R. 309-320) is not yet officially reported. It appears at 93 So. (2d) 624 and is printed herein as Appendix A. The order entered May 6, 1957, overruling the suggestion of errors (R. 344, 322-342) is printed herein as Appendix B.

JURISDICTION

The opinion and judgment of the Supreme Court of Mississippi was entered on March 18, 1957, affirming the judgment of the lower state court in favor of the appellee (R. 309-321). In so doing, however, the Supreme Court of Mississippi for the first time construed Section 5706, Mississippi Code, 1942, in a new and unexpected manner and relied upon that statute as so construed as the basis for its decision. The invalidity of the statute, on the ground of its being repugnant to the Constitution of the United States, was raised by the appellant by filing a suggestion of errors (R. 322-343).[1] The suggestion of errors was overruled by the Supreme Court of Mississippi in an order entered on May 6, 1957 (R. 344). Notice of Appeal to this Court was filed in the Supreme Court of Mississippi on August 1, 1957 (R. 352-353).

Jurisdiction of this Court to review the decision of the Supreme Court of Mississippi by direct appeal is conferred by Title 28, United States Code, § 1257(2).

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[1] Under Mississippi practice, a suggestion of errors is the equivalent of a petition for rehearing.

The following decisions sustain the jurisdiction of this Court to review the judgment by appeal in this case: *Great Northern R. Co.* v. *Sunburst Oil Co.*, 287 U. S. 358, 366-7; *Brinkerhoff-Faris Trust Co.* v. *Hill*, 281 U. S. 673, 677-8; *Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U. S. 313, 320; *Saunders* v. *Shaw*, 244 U. S. 317, 320; *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282-283.

STATUTE INVOLVED

§ 5706, Mississippi Code, 1942:

Agent defined — fraudulent representation — penalty. — Every person who solicits insurance on behalf of any insurance company, or who takes or transmits, other than for himself, an application for insurance, or a policy of insurance, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, collect or transmit any premium of insurance, or make or forward a diagram of any building, or do or perform any other act or thing in the making or consummation of any contract of insurance, for or with any such insurance company, other than for himself or who shall examine into or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance, or request, or by the employment of the insurance company, or of, or by any broker or other person, shall be held to be the agent of the company for which the act is done or the risk is taken as to all the duties and liabilities imposed by law, whatever conditions or stipulations may be contained in the policy or contract; such person knowingly procuring by fraudulent representations, payment, or the obligation for the pay-

ment, of a premium of insurance, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned for not more than one year.

QUESTION PRESENTED

Whether, consistently with the due process clause of the 14th Amendment to the Federal Constitution, a state statute may provide that, notwithstanding express stipulations to the contrary in the contract of insurance, a solicitor of insurance with limited authority is a general agent of the insurer with authority to waive and modify any provision of a policy, so that the insurer is precluded from relying upon the falsity of answers in a written application if the applicant orally gave correct information to the solicitor.

STATEMENT OF THE CASE

Appellant, a corporation organized and existing under the laws of Nebraska, with its home office in Omaha, Nebraska, was authorized by the State of Mississippi to engage in the business of insuring against accident and sickness. In 1954 the appellee's decedent brought an action against the appellant in the County Court of Forrest County, Mississippi to recover monetary benefits under a health and accident policy (R. 2-18). Appellant's defense was that the insured in his written application had made false representations which were material to the risk to be assumed by the insurer, to-wit, (1) that no life, accident or health insurance issued to him had ever been cancelled; (2) that he had never made claim for injury or sickness; (3) that at the time of making said application he was physically and mentally sound to the best of his knowl-

edge and information; (4) that he had never had heart disease or diabetes, and (5) that he had not received medical or surgical advice or treatment, or had any local or constitutional disease within the past five years (R. 31-35). Upon learning of the falsity of the representations in the applications, the appellant had declared the policy void and tendered to the decedent the total amount of premiums paid by him. In its answer to the action it renewed the tender of said premium (R. 30).

The policy on which the action was based included a provision that it was "Issued in consideration of the statements made by the Insured in the application herefor, a copy of which is attached hereto and made a part hereof . . .". It also stated that the policy, including the written attachments, "contains the entire contract of insurance" and that "No Statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions". (R. 16.)

Over the insurer's objection, evidence was introduced at the trial (and not disputed[2]) that the applicant had orally given the soliciting agent correct information with respect to his medical history and his experience with other insurance; that the agent had written false answers on the application form; that the applicant had signed the application without reading it; and that he had not read the copy of the application which was attached to the policy which he received.

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[2] The soliciting agent had not been employed by the insurer for some time prior to the trial, and he was unavailable as a witness.

The jury to which the matter was submitted returned a verdict for the insured and on March 18, 1955 judgment was rendered against the insurer (R. 56). The latter appealed to the Circuit Court of Forrest County, Mississippi, and assigned as error on the part of the trial court its admission, over the appellant's objections, of evidence as to the oral statements which were made to the soliciting agent (R. 216). The judgment of the trial court was affirmed (R. 218),[3] and in due course an appeal was taken to the Supreme Court of Mississippi in which the admission of the oral statements to the soliciting agent was again urged as error (R. 225). The Supreme Court, in an opinion and judgment entered on March 18, 1957, affirmed the judgment of the lower court (R. 309-320; 321).

The state court held, in reliance upon the statute here in question, that the knowledge and information of the soliciting agent was properly attributed to the appellant. The court stated that:

> The proof shows without dispute that William Cole solicited the insurance on behalf of the defendant and prepared the application therefor and transmitted the same to the defendant, and it is not contraverted, and cannot be successfully contraverted, that in so doing he is held to be the general agent of the defendant under Section 5706 of the Mississippi Code of 1942, which provides that every person who solicits insurance on behalf of any insurance company or who takes or transmits, other than for himself, an application for insurance "shall be held to be the agent of the company for which the act is done or the risk is

[3] During the pendency of the appeal the insured died and the appellee, his administratrix, was substituted.

taken as to all the duties and liabilities imposed by law, whatever conditions or stipulations may be contained in the policy or contract." *Cole's knowledge and information acquired in taking the application was, therefore, the knowledge and information of the defendant* . . . (R. 312-313).[2]

The opinion and judgment of the Supreme Court of Mississippi was rendered on March 18, 1957. On April 9, 1957, the appellant filed its suggestion of errors in that court and requested that the opinion of March 18, 1957, be withdrawn (R. 322-342). In its pleading, in which was incorporated the argument in support of the requested relief, the appellant stated *inter alia* that:

> In *Saucier* v. *Life & Casualty Insurance Company of Tennessee* (1940), 189 Miss. 693, 198 So. 625, our court held that a soliciting agent could not be elevated to the position of a general agent by virtue of the provisions of Section 5196 of the Mississippi Code of 1930, the reenactment of which becomes Section 5706 of the Mississippi Code of 1942 . . . (R. 328).
>
> * * *
>
> The Opinion in the *Saucier* case further concluded that a rule such as is announced in the case at bar, as we understand it, would be violative of Section 14 of the Constitution of 1890, and of the 14th Amendment of the Constitution of the United States, in that such a rule would, in effect, deprive persons engaging in insurance contracts of essential liberty guaranteed to them by these provisions of the State and Federal Constitutions (R. 329).
>
> * * *
>
> We earnestly suggest that the rule announced in the case at bar would be destructive of basic

[2] Italics added.

liberties allowing citizens to contract between themselves . . . (R. 336).

* * *

It would appear that the Opinion of this Honorable Court in the case at bar assumes as a premise that the agent Cole was without authority to alter the express provisions of the contract unless his authority was increased by operation of law and because of the provisions of Section 5706 of the Mississippi Code of 1942. If this premise be upheld, then there remains no method whereby the express written terms of the contract may be given effect and meaning as against the behavior of an agent whose authority is limited by the express terms of the policy. Thus the insurer is denied the effective protection to which a party to a written contract is properly entitled. The agent, by his conduct, although expressly made a limited agent by the terms of the policy and by the terms of his employment, can enlarge the scope of his authority, and his principal is without any means of preventing this assumption of authority by the agent (R. 336-337).

* * *

We believe the effect of the Opinion of this Honorable Court as announced, if permitted to stand, would be to unduly obliterate the status properly accorded to written agreements, and to impair the liberty of contract afforded and guaranteed by Section 14 of the Mississippi Constitution of 1890, and by the 14th Amendment to the Constitution of the United States (R. 339).

* * *

The Opinion of the Court has improperly expanded the provisions of Section 5706 of the Mississippi Code of 1942 to a degree that destroys the constitutional powers of parties to freedom of contract . . . (R. 341).

* * *

> The effect of the Opinion of this Honorable Court is to unduly limit the rights of contracting parties, and to destroy the effective protection to which the parties are entitled by reason of written instruments, and is to abridge rights guaranteed by Section 14 of the Mississippi Constitution of 1890, and by the 14th Amendment to the Constitution of the United States (R. 341).

* * *

On May 6, 1957 the Supreme Court of Mississippi entered an Order which simply stated that "having sufficiently examined and considered" the appellant's suggestion of errors, it was of the opinion that the same should be and, therefore, was overruled. Notice of appeal to this Court was filed on August 7, 1957 (R. 352-354).

THE FEDERAL QUESTION WAS RAISED BELOW

The issue involved in this appeal—namely, whether Section 5706, Mississippi Code, 1942, as construed by the highest court of Mississippi, is repugnant to the 14th Amendment to the Federal Constitution—was raised the very first time that it became germane to the proceedings in the state court.

Until the case reached the final appellate level in the state court system, the judgment against the appellant rested upon common law principles involving the extent to which a principal may be charged with the knowledge of an agent. No Federal question was involved at or prior to the argument of the appeal in the Supreme Court of Mississippi. Neither the trial nor the intermediate appellate court held that the knowledge of the soliciting agent, however limited his authority, was to be conclusively attributed to the ap-

pellant on the ground that he must be deemed to be its general agent by virtue of the aforesaid statutory provision. Moreover, the Supreme Court of Mississippi in *Saucier* v. *Life & Casualty Company of Tennessee*, 189 Miss. 693, 198 So. 625 (1940) had previously held that the statute did *not* increase a soliciting agent's authority to act at variance to the terms of a policy and an application. Indeed the *Saucier* opinion stated that if the statute were construed to raise an insurer's special agent with limited powers into a general agent it would violate the 14th Amendment to the Federal Constitution. Hence, it was not until the Supreme Court of Mississippi rendered its opinion in the instant case on March 18, 1957, that a Federal question arose. For in that opinion it held, unexpectedly and for the first time, that under Section 5706 of the Mississippi Code of 1942 the soliciting agent was a general agent and that "his knowledge and information acquired in taking the application was, therefore, the knowledge and information of the defendant."

In its suggestion of errors addressed to the opinion of March 18, 1957, the appellant pointed out to the Court that as construed and applied by it, Section 5706 of the Mississippi Code of 1942 abridged the appellant's rights under the 14th Amendment to the Constitution of the United States. The quoted references to the suggestion of errors which appears in the "Statement of the Case", *supra*, pp. 7-9, indicate the explicitness with which the federal question was drawn to the attention of the Court. It is submitted, therefore, that in overruling the suggestion of errors on May 6, 1957, the Court necessarily upheld the validity of the state statute against the challenge that it deprived the appellant of its liberty and property

without due process of law, in violation of the 14th Amendment to the Federal Constitution.[5]

Since the federal question was created by an unexpected decision of the highest state court, without any prior opportunity for the appellant to anticipate or assert the question, the petition for rehearing which it filed constituted its first chance to present the matter to the court. Accordingly, the Federal question was timely raised and this Court has jurisdiction of the appeal. *Great Northern R. Co.* v. *Sunburst Oil Co.*, 287 U. S. 358, 366-7; *Brinkerhoff-Faris Trust Co.* v. *Hill*, 281 U. S. 673, 677-8; *Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U. S. 313, 320; *Saunders* v. *Shaw*, 244 U. S. 317, 320.

THE FEDERAL QUESTION IS SUBSTANTIAL

As construed by the highest state court—a construction which, of course, is conclusive for present purposes[6]—Section 5706 of the Mississippi Code of 1942

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[5] The failure or refusal of the state court to decide the validity of a state statute, without adequate state ground, is the equivalent of a decision "in favor of its validity" for the purpose of 28 U. S. C. § 1257(2). *Cf. Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282-283.

[6] "The Federal Supreme Court, while bound by the construction of the State statute adopted by the state court of last resort, is not concluded by its reasoning, but must exercise an independent judgment when called upon to determine the Federal question whether the act, as construed and applied, is repugnant to the restrictions of the Federal Constitution. Consequently, although it is not open to the United States Supreme Court to reverse the construction placed upon a state statute by the state court, the question is open as to whether the application made of the statute is so arbitrary as to contravene the fundamental principles of justice which the constitutional guaranty of due process of law is intended to preserve." 11 Am. Jur., *Constitutional Law*, § 109.

does more than designate as agents of an insurance company persons who act for it in some particular. It gives these persons absolute power to bind the insurance company without regard to the scope of their apparent authority. Thus the statute raises special agents to whom an insurer by contract has given limited authority into general agents possessing unlimited powers to charge the principal with liability. We submit that a statute of such breadth, which distorts the true relationship of the parties, goes beyond any legitimate legislative purpose and is, therefore, so arbitrary as to deprive the appellant of its liberty and property without due process of law.

This is not to deny the power of Mississippi to regulate the conduct of insurance business as one affected with a public interest. It is well established that a state has the power to prescribe, within constitutional bounds, the terms upon which insurance may be placed and kept in force upon its residents. On the other hand, a state may not regulate business done within its borders by legislative action which is arbitrary or has no reasonable relation to an object within the state authority. *Cf. Fidelity & Deposit Co.* v. *Tafoya,* 270 U. S. 426, 435. By seeking and obtaining permission to do business in Mississippi, the appellant, a Nebraska corporation, did not thereby become bound to comply with, or estopped from objecting to, the enforcement of state enactments that conflict with the Constitution of the United Sates. *Hanover Fire Ins. Co.* v. *Harding,* 272 U. S. 494, 507; *Connecticut Gen. Life Ins. Co.* v. *Johnson,* 303 U. S. 77, 79-80.

It should be noted that when the contract of insurance was entered into between the appellant and the appellee's decedent the statute in question was con-

strued by the highest court of the state as *not* converting the soliciting agent into a general agent of the appellant. The vice of the statute which is here challenged is that as now construed it constitutes not regulation but oppression, since it makes it virtually impossible for insurance companies in the State of Mississippi to rely upon any written contract with an applicant for insurance to enable it to determine whether or not to assume an insurance risk on the basis of a written application. If insurance companies are precluded from relying upon representations and warranties in written applications, even though the insured is given a copy of the application with his policy, and (as in this case) has the opportunity over a period of years to examine it for any discrepancies between the answers appearing on the application and the true situation, freedom to enter into insurance contracts will have been severely curtailed—far beyond any reasonable demands of the public interest.

This Court has repeatedly held that an insurer may effectively include in its policies provisions which limit the power of insurance agents to waive conditions therein, or which restrict the manner in which waivers may be made, and that such provisions are binding. *New York Life Ins. Co.* v. *Fletcher*, 117 U. S. 519; *Northern Assurance Co.* v. *Grandview Bldg. Assoc.*, 183 U. S. 308; *Aetna Life Ins. Co.* v. *Moore*, 231 U. S. 543; *Prudential Ins. Co.* v. *Moore*, 231 U. S. 560; *Lumber Underwriters of N. Y.* v. *Rife*, 237 U. S. 605; *Sun Ins. Office* v. *Scott*, 284 U. S. 177. If the Mississippi statute had been construed as providing that irrespective of written stipulations in the contract of insurance, any solicitor who obtains an application for insurance on behalf of an insurer is the latter's agent

and not the insured's, and that the insurer is bound to the full extent of the apparent authority of such person, such legislation might be said to have considerable support in the decisions of this Court. *Cf. Stipcich* v. *Metropolitan Life Ins. Co.*, 277 U. S. 311; *American Fire Ins. Co.* v. *King Lumber & Mfg. Co.*, 250 U. S. 2; *Continental Life Ins. Co. of Hartford, Conn.* v. *Chamberlain*, 132 U. S. 304. But a legislative fiat which makes every person acting on behalf of an insurer its *general* agent with unlimited authority to waive, modify or alter a contract, no matter how menial his position or how trivial and restricted his apparent authority, and indeed regardless of the fact that he thereby commits a fraud upon the insurer, cannot be said to have received the sanction of this Court.

The primary purpose of Section 5706 was to control "wildcat" insurance companies[7]—presumably insurers which had not demonstrated their reliability or responsibility because of their failure to comply with statutory requirements for doing business in Mississippi. Accordingly, the burden and responsibility were placed upon any person in the state who purported to act in their behalf. Another apparent purpose of the statute was to settle, as between the parties to the contract of insurance, the relationship of the agent through whom the negotiations for insurance were conducted—that is, to prescribe that he is an agent of the insurer rather than of the insured. In effectuating these purposes the state provided that an insurer was the principal of any person acting in its behalf so far as "duties and liabilities imposed by law" were concerned. The

[7] That was the sole purpose found by the Supreme Court of Mississippi in the *Saucier* case, *supra*. The opinion of the state court in the instant case is silent on this point.

Saucier decision, *supra,* held that the quoted phrase did not refer to duties and liabilities that grow out of a contract of insurance, such duties and liabilities being determined by the provisions of the contract itself, but rather to duties and liabilities imposed upon insurance companies and their agents by law outside and independent of the provisions of the contract of insurance.

A similar Florida statute received the same construction in *Mut. L. Ins. Co.* v. *Hilton-Green,* 241 U. S. 613, in which this Court concluded that it "undertakes to designate as agents certain persons who in fact act for an insurance company in some particular; but it does not fix the scope of their authority as between the company and third persons, and certainly does not raise special agents, with limited authority, into general ones, possessing unlimited power." See, also, *Maryland Casualty Co.* v. *Campbell,* 255 Fed. 437, 441 (C. A. 5), certiorari denied, 250 U. S. 658, in which (referring to the same Florida statute) the court said: "That statute does not have the effect of conferring a power which the contract of the parties shows was explicitly withheld."

The constitutional basis for challenging the Mississippi statute as now construed by the highest state court may be summarized in the language used by the court in the *Saucier* case, *supra,* as follows:

> "The word 'liberty' as used in these sections of the two constitutions [state and Federal], includes liberty of contract and the liberty of contract guaranteed by them is freedom from arbitrary or unreasonable restraint. In order for a statute to survive when confronted with due process of law, it must not appear to be arbitrary or capricious,

but must have a reasonable relation to a legitimate end. To raise an insurance company's special agent with limited powers, into its general agent when acting for it in the particulars specified in the statute, with authority to then make material changes in a policy of insurance issued by the company, manifestly has no relation to the end or object for the accomplishment of which this statute was enacted, or to any other imaginable legitimate legislative end."

The financial stability of insurance companies is a matter of great importance to many million policy holders and their beneficiaries. This depends in great measure on the care exercised in the selection of risks, which, in turn (under the generally known practice), depends on the reliability of the information afforded to the medical officers of the insurer at its home office, by the contents of applications. A statute which purports or is interpreted to convert a special limited agent into a general agent would, in effect, render a contract of insurance so unstable as to destroy the very foundation upon which such contract is built. *Cf. Provident Mut. Life Ins. Co.* v. *Parsons*, 70 F. 2d 863 (C. A. 4), certiorari denied, 293 U. S. 582.

CONCLUSION

For the foregoing reasons we believe that the question presented by this appeal is substantial and that it is of public importance. The appellant respectfully suggests that if this appeal is given plenary consideration, with briefs on the merits and oral argument, it will be able to demonstrate that this particular abridgement by the state of Mississippi of the constitutional rights of insurance companies to enter into agreements

with their insured cannot be justified as a reasonable exercise of legislative authority.

Respectfully submitted,

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